COMMITTEE ON BILLS ON SECOND READING

January 20, 2004

5:30 PM

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Roy, Sysyn, DeVries, O'Neil

Messrs: R. MacKenzie, Deputy Solicitor Arnold, D. Anagnost

Chairman Lopez advised that the first purpose of the meeting is organizational in nature, and requests the Clerk to provide a brief overview regarding typical issues addressed by the Committee.

Deputy Clerk Johnson stated the Clerk was going to give a brief overview. What we did was provided you in written summary the jurisdiction basically of the Committee and you can read that at your leisure and if you have any questions feel free to contact the Clerk's Office.

Ordinances:

"Amending the Zoning Ordinance of the City of Manchester by amending Section 5.10 Table of Principal Uses by allowing single-family attached (townhouse) dwellings (item A.2) as a permitted use within CBD district (Central Business District)."

"Amending the Zoning Ordinance of the City of Manchester by changing the allowed density of multi-family housing in the Central Business District under 'Minimum Additional Lot Area for each Unit after the first three units' from 1,000 square feet to 500 square feet."

Alderman O'Neil moved to recommend that the ordinances ought to pass. Alderman Sysyn duly seconded the motion. Chairman Lopez called for a vote. There being none opposed, the motion carried.

Ordinances:

"Amending the Zoning Ordinance of the City of Manchester by clarifying Section 4.01 Establishment and Purpose of Districts, subsection (5) Residential Suburban Multifamily District (R-SM) by clarifying the purpose of the district and the minimum size."

"Amending the Zoning Ordinance of the City of Manchester by extending the R-SM (Residential Suburban Multifamily) zoning district to include the full extent of a parcel of land on Old Wellington Road (TM 645, Lot 10) currently zoned R-1A."

Mr. Robert MacKenzie stated I was hoping to get up a map of the area but I think it is connected to the City Clerk's computer so I won't be able to show it. I do have copies of that same map for you in case you would like to see it. If I could summarize, Mr. Chairman, there are two distinct actions here.

Chairman Lopez stated I just want to clarify something and Carol will you help me out on this because there are some people in the audience who called me. Can you tell them the procedure about the City doing this rezoning and what the process was so that they understand?

Deputy Clerk Johnson responded I guess there are a couple of issues as I understand. The first is that when a zoning ordinance is presented to the Board it is referred to the Planning Board and we receive a list of abutters for the property and send out what we call courtesy notices. Those were done in these instances by the City Clerk's Office, which is part of the policy requirements of the Board of Mayor and Aldermen. In this case they both had a public hearing, which is required by statute and have been referred back to the Committee for further review. We would note that there has been a communication received in opposition to the rezoning, which we have supplied to the Committee. There have been questions raised, I guess, about additional space in the Planning Board report, which is also a requirement and has been attached to your agenda and I know there are some suggestions to the Committee as to how to deal with that and I think that is what Bob is going to allude to next.

Chairman Lopez stated on another note in reference to the developer in that particular area contacting abutters, that is the point I want to make. The City is doing this. The person doing the construction did not have to do that at this time until it goes through.

Mr. MacKenzie stated the two provisions here, the first one clarifies the intent of the so-called 10-acre rule. When the R-SM was first passed in the 1990's there was a feeling that it shouldn't...the Board shouldn't be rezoning individual small

lots within the City – you know a small 5-acre lot because that would be infill so the intent was to set a size limit that you would have a large enough neighborhood that it would not be infill or be a neighborhood of its own. In looking at the wording of that ordinance, the City Solicitor's Office I think correctly determined that the language was ambiguous. It meant that even if you had a 10-acre zone already that you couldn't add a small 2-acre piece to it. That was not the intent of that original 10-acre rule. The intent I believe since we worked on it was to have at least 10-acres total for that district. If you wanted to then add, once you had 10acres, you could add 1-acre to it or 2-acres or 3-acres and you would still have the total 10-acre district. So the first zoning amendment would clarify the language and make sure that as long as you had a 10-acre total district that you could add to it if each of those additions were appropriate. I would note that this does apply to two rezonings currently before the Committee. It does impact on the Old Wellington Road rezoning because the addition proposed here would be less than 10-acres and it does impact on a rezoning request on Candia Road, which was slightly less than 10-acres. So if the Committee recommended to the full Board that this passed then they could consider acting upon the other two. If the Committee recommends not favorable on the 10-acre clarification then neither of the two other zoning proposals could proceed. I did want to clarify that. The other provision is to change the balance of zoning on the City's so-called Old Wellington Road lot. The lot...a majority of the lot is currently zoned R-SM, which is Residential Suburban Multi-Family. As part of the proposed land sale the Board agree that they would at least consider a rezoning of that entire lot so we are carrying forth with that provision. There is a prospective purchaser who, I believe, has a signed purchase and sales agreement with the City. We have also done an appraisal...I know I am going a little bit astray of this Committee but we have an appraisal and that has come back and the developer's offer is higher than that independent appraisal that we got. At this point, this could be the next major step of the Board in proceeding with a final sale of that property. At this point I would be happy to answer any questions you have on the Planning Board comments.

Chairman Lopez stated I have a question about the correspondence we received from Tom Coughlin. Could you explain the 90 units for that particular...there will be no more than 90 units is that the stipulation?

Mr. MacKenzie responded yes. I have spoken with the developer and the developer has told the neighborhood and has told me that there will be no more than 90 units and at some point we can get that in writing I am sure from the applicant because he indicated that he would do so.

Alderman Roy stated it is my understanding that before this ever went out to RFP that the City agreed to look at the rezoning. Is that correct?

Mr. MacKenzie responded that is correct.

Alderman Roy stated and following along the lines of Alderman Lopez the 90 units as that comes in I know the developer stipulated it but what is the process, what is the safeguard for the abutters at this point staying at 90 units.

Mr. MacKenzie responded I know the Solicitor's Office, after speaking with them, did put a provision in the purchase and sale agreement that referenced working with the neighborhood to come to an appropriate understanding. I know Tom Arnold is here and could comment on that. We could certainly verify that 90-unit provision and get a letter from the developer to verify that he would build no more than 90 units. I know the neighborhood was concerned that it could go over the 90 units but again the developer is representing to me that he would only build 90 units.

Chairman Lopez asked Mr. Arnold do you agree with that.

Deputy Solicitor Arnold stated I am sorry but I missed the last part of the conversation because I was speaking to Carol. When Mr. MacKenzie said that there was a provision in the purchase and sale dealing with working with the neighbors that certainly is the case. In terms of getting assurances that there will be no more than 90 units I am sure we could probably accomplish that as our part of the actual sale of land or as part of the planning process.

Alderman Porter stated I do appreciate the courtesy extended since I am not a member of the Committee but Bob in looking at this my reaction is that it makes sense to have it zoned R-SM because of the consistency with the area and the City does need housing. The area I am having a little bit of difficulty with is this is a clarification of an ordinance but it really isn't. This is simply eliminating half of it, which refers to size. Initially, when this was drawn up size was of some consideration and I can understand that whenever you put a number in an ordinance or charter or by-laws or what have you, you are kind of locked into that and there is always an exception that comes along that may not fit. I think R-SM is a unique zoning simply because it means more people and more people means more kids to potentially impact the schools, more services needed to be provided by the City, more traffic and more other difficulties or opportunities if you will to put up with. Is it prudent to wipe out all reference to size when you did say before that the intention was so that you couldn't take a small parcel and change it to R-SM? By eliminating that portion of the ordinance, that is a major elimination. Has consideration been given to changing the number from 10-acres to something somewhat smaller not just to make this problem go away but to retain some clout in the future because I know that as the representative of Ward 6 that Ward 6 is

going to be targeted for development and it is reasonable because there is a substantial amount of developable land in Ward 6 but I do think that in an ordinance we should have some sort of ability to hang our hat on something related to size. This simply eliminates it. Has that been considered?

Mr. MacKenzie responded the 10-acres will not be eliminated. The 10-acres will remain in the ordinance so that if you look at your plan and I know I don't have it on the screen but you will see that the adjacent land to the east and the south is all R-SM. The 10-acres will stay in the ordinance. It will say though that your total district, every district that you have R-SM, has to be at least 10-acres. In this particular instance if the small piece on Old Wellington Road of 3-acres, if someone petitioned that and everything else around it was single-family but they just wanted 3-acres of R-SM we would not be recommending that that happen.

Alderman DeVries stated to follow along that line of questioning I guess one of the only concerns I have is that the unintended consequence of this is going to be where we do have a large R-SM district every abutter to that will be looking and saying are there greater profits if we redevelop the single-families into a multifamily and add on to that R-SM district. Is there any way within the ordinance that we can have a handle that it would have to be open land that is part of this as opposed to already developed single-family and possibly tearing down single-family homes or is that something that you just don't expect to see?

Mr. MacKenzie responded if you look at the rest of the R-1A on that map there are only probably eight lots left in the single-family. If you redevelop that into multifamily you are not going to get a lot of units.

Alderman DeVries replied my concerns aren't even this particular area. I am thinking larger scale that the City in general would be affected.

Mr. MacKenzie stated I would be somewhat careful know about recommending any new major R-SM districts primarily because we have reached a situation in the housing market where we have seen rents stabilize and perhaps dip a little bit. So in terms of creating new major 10-acre R-SM districts I may be hesitant at the present time to recommend any new ones. Again, the control is in the Board. I mean if you find that someone comes in with 40-acres that they want to zone multi-family first of all I would be hesitant given the housing market and the Board has the control. Again the 10-acre limit sets a bare minimum but the Board has the control over whether you grant any new major R-SM districts.

Alderman DeVries responded you are not quite hitting the mark. I guess my concern is more that there is an existing R-SM and piecemeal they want to add on to it an acre at a time and because they are abutting an R-SM they can do so. It

would have to of course come before this Board and be under our scrutiny but I am just wondering are there any further protections that we need to consider adding into this so that we don't have a landslide of applications of what is currently R-1A looking piecemeal to add on to an R-SM an acre at a time. I am not opposed to this happening I am just saying do we need to take it a step further to prevent a lot of work.

Mr. MacKenzie replied I don't know how to answer that. Partly it would be market driven, the number of rezonings. Partly it will be the extent to which we can update the Master Plan and identify whether there are any more major areas for this. If you do piecemeal it though an acre at a time you don't usually get a lot of dwelling units. I would note that with the new zoning ordinance this area was actually down zoned from R-3, which allows 30 units to the acre to the R-SM which allows 15 units to the acre so the long-term potential for this area in general was significantly reduced two and a half years ago.

Chairman Lopez stated I would like to add to that that with the new procedures we put in place with the last Board somebody could come in an ask for something to be rezoned and tear down X number of houses and the process of going through the Planning Board and having a public hearing would be there and everybody would be standing up and cheering or everyone would be here hollering don't do it. The procedures have been set.

Alderman O'Neil asked have all of the residents in the area had a chance to meet with Mr. Anagnost and/or the Manchester Housing Authority.

Chairman Lopez stated I will let Mr. Anagnost speak for himself. I have had some conversations with him.

Mr. Dick Anagnost stated what was the question.

Alderman O'Neil stated there is a reference in a letter that you haven't actually spoken to all of the abutters I guess and I just wanted to make sure that you had an opportunity to speak to Mr. Bourgeois specifically who is reference in the letter.

Mr. Anagnost responded yes tonight I spoke with Mr. Bourgeois in the hall and preliminarily briefed him on what was going on. What I spoke to the abutters about though just to clarify for this Board was the site plan and the unit density and that sort of thing. I didn't speak with the abutters about rezoning or anything to do with zoning other than the fact that I notified them that a small piece in the front needed to be rezoned. So for the purposes of this, no I didn't speak to all of the abutters but for the purpose of achieving the 90 units and showing them

various layouts and that sort of thing I have and as of tonight with Mr. Bourgeois being present I showed him the prospective layout as well.

Alderman DeVries moved to recommend that the ordinances ought to pass. Alderman Roy duly seconded the motion. Chairman Lopez called for a vote. There being none opposed, the motion carried.

Mr. MacKenzie asked can I add a quick note to that. I know the Board has questioned me about the possible traffic improvements in the area. I guess what I would like to say is that I will continue to follow-up on that issue and perhaps submit it to the CIP process so that it does not get lost. We could recommend to the Mayor that we can resolve that. I still have to talk to the Finance Director about it and if you would like we will follow-through with that.

Chairman Lopez stated I think the Board referred that to the Traffic Committee so please coordinate that. Now I want to go back in reference to the communication from Joan Bennett, the Chair of the Manchester Planning Board and ask Carol to guide me in the procedure so that this doesn't get lost in the shuffle. What should we do?

Deputy Clerk Johnson stated my understanding is that there are some other portions of property that are suggested to be considered for rezoning as well for the R-SM and there is some question about whether or not some of people who own property in that area might want to join in that so I guess the suggestion would be to request the Planning Director to go forward with submitting to the Board at a later date ordinances dealing with the properties outlined in Ms. Bennett's letter as well as meeting with other area property owners so that you can resolve it all and it will go through that process.

Chairman Lopez asked is everyone familiar with the letter on Item 4. The City Clerk has suggested that we direct the Planning Director to proceed in compliance with Joan Bennett's letter and provide the ordinance changes for that.

Alderman O'Neil stated I just want to make sure that I am clear. I have been here for a few years now. Are we going out suggesting rezoning and not the owners? Is that is what is suggested in that letter?

Chairman Lopez responded it is suggested by the Planning Board and after reviewing this part of the procedure is that we send...anybody who wants to rezone...Mr. MacKenzie has to go to the Planning Board and get a recommendation from the Planning Board within 30 days but in this case they have decided to answer and indicate as in the letter that there are certain areas they would like to see rezoned.

Alderman O'Neil asked who is the petitioner asking for the rezoning. It is the Planning Board.

Mr. MacKenzie answered the City can petition to rezone property. I am always most comfortable after speaking with the owners and making sure they have a consensus agreement with that change. In this particular instance, there are three properties that the Planning Board recommended in order to streamline the district. Two of those are non-buildable. One is another City wetland that couldn't be developed. One has easements on it. What I did was the only really private property owner spoke with me today. We previously met. He had some answers that he wanted clarified. That was Mr. Coughlin. I would like to meet with him again before we would proceed with those changes to get his reaction to that.

Alderman O'Neil stated I am just concerned that we are petitioning for something without even talking to the owners...I mean Mr. MacKenzie just talked to them today.

Chairman Lopez responded we are just authorizing him to do so because the Chairman of the Planning Board and the whole Planning Board is recommending this to the Board of Mayor and Aldermen. We are not doing anything but authorizing him to go forward. He will meet with all of the abutters and bring back a particular ordinance and do a public hearing and everything else.

Alderman O'Neil stated I guess my concern is and Bob correct me if I am wrong but how often has that happened that the City has initiated rezoning and not the owners.

Mr. MacKenzie replied it is normally the owner that petitions a rezoning. On occasion the Planning Board has...after the last Master Plan in 1993 the Planning Board had certain rezoning...

Alderman O'Neil interjected that was 11 years ago. We haven't done it in 11 years. I am just concerned that it is not a great precedent.

Alderman DeVries stated what I was just thinking was what we are doing is just authorizing the Planning Director to make contact with the abutters to see if they are interested in generating their own petition for rezoning and to assist them with the process to do so. I don't think that we are suggesting that we go above and beyond. Maybe I am wrong and maybe you would like to correct me but it is generally a developer that would have the means through legal assistance to be a petitioner. That is why so many people had the opinion that we respond only to developers coming forward. It is not the case; it is just simply that it is normally a

developer who would have the knowledge to know how to request a rezoning on property. If we are authorizing you to go forward and assist the abutters in this instance to see if they are interested is that what you...

Mr. MacKenzie interjected yes. Again just to refer back to Alderman O'Neil's question it is perfectly legal for the Planning Board to petition for a zoning change. It does not happen often. I would again like to talk to the owners in the area first to gain a consensus but it is legal for the Planning Board to petition for a zoning change.

Alderman Roy stated Bob it is my understanding that if that does go forward this way that in working with the abutters this would come back for a full public hearing back in front of the Board.

Mr. MacKenzie answered that is correct.

Alderman Roy asked so we will hear from the public on this.

Mr. MacKenzie answered yes.

Chairman Lopez asked do we have a motion on the floor.

Deputy Clerk Johnson answered no. I think a motion to request the Planning Director to talk to the owners about the rezoning and report back to the Board would be appropriate.

Alderman Sysyn moved to have the Planning Director contact the abutters to see if they are interested in rezoning their property and report back to the Board. Chairman Lopez called for a vote. The motion carried with Alderman O'Neil being duly recorded in opposition.

Chairman Lopez asked if we take Item 6 off of the table are you ready to deal with it.

Mr. MacKenzie answered Item 6 deals with the Candia Road rezoning.

TABLED ITEMS

Ordinances:

"Amending the Zoning Ordinance of the City of Manchester by changing the zoning district of property currently zoned IND (General Industrial) to R-SM (Residential Suburban Multifamily) by

extending the R-SM zone district on a portion of property identified as TM 478, Lot 8, located on Candia Road." (Tabled 10/14/2003)

"Amending the Zoning Ordinance of the City of Manchester by amending Article 5, Section 5.10, G-6 of the Table of Principal Uses by inserting a "P" in the "IND-General Industrial/Industrial Park" column of item G-6 of the table."

(Tabled 10/14/2003)

On motion of Alderman O'Neil, duly seconded by Alderman DeVries it was voted to remove this item from the table.

Mr. MacKenzie stated this deals with the rezoning request on Candia Road just east of I-93 where there is an existing R-SM district, Eastgate, and the owner would like to rezone a portion of this property and put a Dunkin Donuts and a bank on the front portion on Candia Road. I am just a little hesitant about recommending that tonight because I haven't had the time to really review one of the questions that came out previously. The question that I know Alderman Shea asked is what is the impact on the schools. I guess I would really like to get an answer to Alderman Shea before I make any final recommendations but the Committee can do what it wants.

Alderman DeVries stated the second half of that ordinance deals with the change of principle uses. Would you feel that we could act on that independent?

Mr. MacKenzie responded it is related to this project and it allows drive-up windows on fast food restaurants or banks. Currently that is not allowed in the zoning ordinance. I don't see any major issues with that. The Board could proceed with it. The other one is perhaps more of a concern with me. I just want to make sure that the numbers are in order on the R-SM portion. The Board could consider that second portion.

Alderman DeVries stated I would ask if the petitioner was here if they had any interest in us attempting to split that and move one along while the other remains tabled.

Chairman Lopez asked, Mr. MacKenzie didn't this all come in at one time though.

Mr. MacKenzie answered yes it did.

Alderman DeVries asked so is that an unusual thing to split them.

Chairman Lopez replied I think one might affect the other so I am just wondering...

Alderman DeVries interjected don't think so. Could we hear from the petitioner?

Mr. Anagnost stated I am a consultant for the Skrivanos Group, the owners of the property. They both did come in together and I believe that Nick Lazos is present and I believe he has some information for Alderman Shea and has submitted it for review at this point. Yes, we would be interested in either or both going forward at the earliest possible convenience.

Chairman Lopez stated I would like to put it back on the table and give Mr. MacKenzie an opportunity to review the whole process on that particular site to make sure that we are getting the information.

Alderman DeVries stated I guess I would ask for clarification. Again, Mr. MacKenzie did you say you are uncomfortable or comfortable with us going forward with the second portion of that?

Mr. MacKenzie responded I have no problem going forward on the second portion. I just need a little bit more time on the first half.

Alderman DeVries moved to split the ordinances and recommend that the second ordinance ought to pass. Alderman O'Neil duly seconded the motion.

Alderman Porter stated since this is in Ward 6 I would like to have an opportunity to ask questions. How many of these areas do we have in Manchester that you would consider...you have Industrial Drive so that would mean anything in there and Brown Avenue...any general industrial would be allowed without a variance or anything to have a drive-thru?

Mr. MacKenzie responded yes any of the industrials outside of the I-93 293 beltway and I think there are only three of those. It would be East Industrial Park, the Airpark industrial area off of South Willow Street and the Brown Avenue Industrial Park. It would affect those three.

Alderman Porter asked am I correct in that the Zoning Board of Adjustment did not wish to grant a variance on that.

Mr. MacKenzie answered they have granted a variance across the street on the Wendy's that went in there but they were hesitant to grant it for this bank once they realized there were going to be more of those and wanted more of a policy decision from the Board of Mayor and Aldermen.

Alderman Porter stated I don't object to that but I just wanted to ask.

Alderman DeVries asked if I could just follow-up on that, Mr. MacKenzie, was there not also some discussion at that variance meeting and I am not sure if you watched it but wasn't there some uncertainty in their minds as to the back portion of the property and that was part of the reason that they may have denied that variance that night.

Mr. MacKenzie answered I know there was confusion and they wondered because they saw the access road going adjacent to the bank and Dunkin Donuts and they were concerned about what was going in there.

Alderman DeVries stated a drive-in when not knowing what was behind that right.

Mr. MacKenzie responded right and one of the concerns that I have with leaving it industrial is that there is residential that wraps around it and if you have heavy industrial in there it would impact the Waverely Street area and the Holt Avenue residential area so there may be benefits to rezoning it to R-SM.

Chairman Lopez called for a vote on the motion to recommend that the second ordinance ought to pass. There being none opposed, the motion carried.

On motion of Alderman Roy, duly seconded by Alderman DeVries it was voted to put the first ordinance back on the table.

7. Ordinance:

"Amending the Code of Ordinances of the City of Manchester by creating a new section within Chapter 111: Amusements establishing regulations for noise activities conducted in outdoor concert venues throughout the city and inserting new penalties in Section 111.99: Penalty to enforce these regulations."

(Tabled 11/06/2002)

This item remained on the table.

8. Ordinances:

"Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by repealing Section 130.10 Tattooing in its entirety."
(Tabled 07/16/2002)

"Amending the Zoning Ordinance of the City of Manchester to include a new use group category for Tattoo Parlors, inserting changes to Table 5.10, adding supplementary regulations for tattoo parlors, and providing for location restrictions so as to prohibit such parlors within 600 feet from each other and not less than 500 feet from a Residential or Civic Zone."

(Tabled 07/16/2002)

On motion of Alderman O'Neil, duly seconded by Alderman Roy it was voted to remove this item from the table.

Chairman Lopez asked, Mr. Arnold, can we receive and file this. It has been on the table for a long time. If this comes up again we could have a new correspondence to this Committee or through the Administration Committee to us?

Deputy Solicitor Arnold replied I am not so sure I can answer the question. I mean you could certainly proceed that way if you wished to do so. It is basically a policy decision by this Committee as to whether they wish to proceed on this particular ordinance or not. Certainly if you wanted to receive and file or put it back on the table or receive and file with the understanding that something else will be coming forward hence a restart of the process you could do that also.

Chairman Lopez stated my recommendation is that we receive and file.

Alderman DeVries moved to receive and file. Alderman Sysyn duly seconded the motion. Chairman Lopez called for a vote. There being none opposed, the motion carried.

There being no further business, on motion of Alderman O'Neil duly seconded by Alderman DeVries it was voted to adjourn.

A True Record. Attest.

Clerk of Committee